**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPM/S No. 673/05
Rajendra Prasad Nautiyal
Vs
Krishan Kumar Bangwal & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 21.8.2006

Initial of Judge

**HIGH COURT OF UTTARANCHAL AT NAINITAL**

Writ Petition no. 673 of 2005 (MS)

Rajendra Prasad Nautiyal s/o Sri D.P. Nautiyal, resident of Deena Lodge Compound, Mallital, Nainital ..... Petitioners

Versus

1. Krishna Kumar Bangwal s/o Sri Yashupati Prasad Bangwal, Kirtinagar, Tehri Garhwal
2. Election Tribunal, Bar Council Uttaranchal, Dehradun Through its Members Sri L.B. Gurang, Sri rajendra Kotiyal and Sri Rajendnra Singh Negi
3. Dharmveer Sharma Drong Sagar Road, Kashipur, District Udham Singh Nagar
4. Devendra Kumar Sharma r/o Dina Lodege, Mallital, Nainital.
5. Sukhpal r/o Village & P.O. Bada, The. Pithoragarh
6. Surendra pal Singh Pudir r/o 27 Inder Road, Dehradun
7. Surat Singh negi r/o 137, Lakhibagh, Dehradun
8. Man Mohan r/o 92 /21, Ganga Vihar Haridwar Road, Dehradun
9. Razia Beig Km. 60, Ghosi Gali, Dehradun
10. Surendra Kumar Mittal 7/40 Vikas Nagar, District Dehradun
11. Barahaspati Prasad Nautiyal r/o 5, Cement Road, Dehradun
12. Vijay Bhatt r/o 275, G.B. Pant Marg, Hadwani, Nainital
13. Gopal Singh Mehra r/o Dharam Kunj, hari nagar Haldwani, Nainital
14. Prabhat Kumar Chaudhari r/o 283 Lal Bazar, Almora
15. Lokendra Dutt Dobhal Court compound Nainital
16. Shiv Charan Singh Rawat, 3-A Juyal Flats 39/46 Amrit Kaur Road, Dehradun.
17. Chandra Prakash Agarwal r/o 53, Civil Lines roorkee, Haridwar
18. Subhash Tyagi r/o Near Jain Temple, Jwalapur, Haridwar
19. Bala Dut Upadhya s/o Sri L.M. Upadhya r/o Nainital
20. Yogendra Singh r/o Village & P.O. Bahadrabad, Haridwar
21. Anil Kumar Jain r/o village & P.O. Purola, Uttarkashi

22. Anurag Singh r/o 85 Saharanpur Road, Dehradun.
23. Atul Kumar Bansal r/o Chowk Bazar, Jaspur, District Udham Singh Nagar
24. Bharat Singh r/o Uttaranchal House No. 60, Niranjanpuri, Kanwali, Dehradun
25. Bhuwan Chandra Pandey, 181-82 Tallital, Nainital
26. Bijendra Dutt Raturi, 3-A Convent Road, Dehradun
27. Govind Ballabh Pande r/o C-9 Naini Vihar Mallital, Nainital
28. Gurvinder Singh Court Compound, Tehri Garhwal
29. Harbir Singh Kushwaha r/o Mahant Road, LaxmanChaneli, Dehradun
30. Hari Shankar Counsul r/o P.O. Bhowali, Nainital
31. Harsh Vardhan r/o Court Compound, Nainital
32. Jagdish Prasad Joshi r/o 229, Dehradun Road, Rishikesh
33. Jagmohan Singh Rathore r/o Near I.T.I. Tanakpur Road, Khatima
34. Jaya Thakur K. r/o 18, Engineer Enclave, G.M.s. Road, Dehradun
35. Kishore Singh Bhaskar 140/3 thana Sabiq Kashipur, Udham Singh Nagar
36. Kripal Singh r/o V. Sultangarh, Junda Kashipur, Udham Singh Nagar
37. Krishi Shukla r/o Shukla Niwas, Nainital
38. Mayank Pandey, I, Raqmeshwar Lane, Near S.G.R.R. Public School, Jhanda Bazar, Dehradun
39. Munfait Ali r/o V.P.O. Paniyala Chandpur, Haridwar
40. Nadim Uuddin Ali Khan, Kashipur, Udham Singh Nagar
41. Nirmal Kumar Joshi r/o Stoneligh Compound, Tallital, Nainital
42. Prakash Chandra Maulekhi r/o Manohar Niwas Mallital, Nainital.
43. Prem Singh Danu, Court compound, High Court, Nainital
44. Raghunandan Prasad Rturi r/o 113, Chukhuwala, Block 1, Dehradun
45. Rajeev Singh r/o village 44 Sunderwala, P.O. Raipur, Dehradun.
46. Rajendra Kumar Wadhwa 2/1 East Rest Camp. New Laxmi Transport, Dehradun
47. Rajendra Singh Kutiyal r/o Court Compound, Nainital
48. Rajendra Singh Kutiyal, Court Compound, Nainital

49. Rajendra Singh Palni r/o F-4, Vikaspuram, Near Rampur Road, I.T.I. Haldwani, Nainital
50. Rama Kant r/o V. Sahaspur, P.O. Sahaspur, Dehradun
51. Rama Goswami r/o Mahant Niwas 202 Subhash Nagar, Dehradun
52. Raman Kumar Shah Court compound, Nainital
53. Sandeep Bhatt r/o 35, Tyagi Road, Dehradun
54. Shambhu Prasad Mamgain r/o village & P.O. Kandli, Dehradun
55. Shree Chand Maurya r/o 20, Dharampur, Now 11/4 Balbir road, Dehradun
56. Shyam Singh Negi, High Court Compound, Nainital
57. Sunil Kumar r/o Kundan Kung 80-A, Darampur, Haridwar Road, Dehradun
58. Sunil Negi r/o 137, lakhibagh, Derhadun
59. Surya Narayan Babulkar r/o 9, Garden House Compound Head P.O. Road, Mallital, Nainital
60. Swatantra Kumar r/oMubarikpur Alipur Mohammapur Bujurg Hardwar
61. Syed Nadim Khurseed r/o Kapoor Lodge, Tallital, Nainital
62. Tajendra Kumar r/o Line No. 1 Azad Nagar, haldwani, Nainital
63. Taveer Alam r/o Line No. 1 Azad Nagar Haldwani, Nainital
64. Vijay Singh Pal r/o village Deval Chaur, P.O. Manglaur Town, Haridwar
65. Vinod Kumar Agarwal r/o Mohala Lal Bara, P.O. Manglaur Town, Haridwar
66. Vinod Prasad r/o Uma Niwas, Power House, Pauri Garhwal
67. Vinod Sharma r/o Uttaranchal Vidhi Pramasrsh Kendra, Mallittal, Nainital
68. Vipin Kumar Goyal r/o Shravan Nath Gher Moti Bazar, Haridwar
69. Yogendra Singh Village & P.O. Kanwali, Dehradun
70. Bar Council of Uttaranchal through its Secretary
71. Bar Council of U.P. Allahaad through its Secretary.

..... Respondents

Writ Petition no. 674 of 2005 (MS)

Bala Dutt Upadhaya s/o Sri Lokmani Upadhaya, resident of Panchjanya Bhawan, Mallital, Nainital ..... Petitioners

Versus

1. Krishna Kumar Bangwal s/o Sri Yashupati Prasad Bangwal, Kirtinagar, Tehri Garhwal
2. Election Tribunal, Bar Council Uttaranchal, Dehradun
3. Sri L.B. Gurang, Advocate, Member Bar council, Uttaranchal
4. Sri Rajendra Kotiyal s/o Sri R.P. Kotiyal, Member Election Tribunal, Bar Council, Uttaranchal
5. Sri Rajendra Singh Negi, Advocate, member Election Tribunal, Bar Council, Uttaranchal
6. Dharmveer Sharma Drong Sagar Road, Kashipur, District Udham Singh Nagar
7. Devendra Kumar Sharma r/o Dina Lodege, Mallital, Nainital
8. Sukhpal r/o Village & P.O. Bada, The. Pithoragarh
9. Surendra Pal Singh Pudir r/o 27 Inder Road, Dehradun
10. Surat Singh Negi r/o 137 Lakhibagh, Dehradun
11. Man Mohan r/o 92/21, Ganga Vihar Haridwar Road, Dehradun
12. Razia Beig Km. 60, Ghosi Gali, Dehradun
13. Surendra Kumar Mittal 7/40 Vikas Nagar, District Dehradun
14. Barahaspati Prasad Nautiyal r/o 5, Cement Road, Dehradun
15. Vijay Bhatt r/o 275, G.B. Pant Marg, Hadwani, Nainital
16. Gopal Singh Mehra r/o Dharam Kunj, hari nagar Haldwani, Nainital
17. Prabhat Kumar Chaudhari r/o 283 Lal Bazar, Almora
18. Lokendra Dutt Dobhal Court compound Nainital
19. Shiv Charan Singh Rawat, 3-A Juyal Flats 39/46 Amrit Kaur Road, Dehradun.
20. Chandra Prakash Agarwal r/o 53, Civil Lines Roorkee, Haridwar
21. Subhash Tyagi r/o Near Jain Temple, Jwalapur, Haridwar
22. Bala Dut Upadhya s/o Sri L.M. Upadhya r/o Nainital
23. Yogendra Singh r/o Village & P.O. Bahadrabad, Haridwar
24. Anil Kumar Jain r/o village & P.O. Purola, Uttarkashi

25.Anurag Singh r/o 85 Saharanpur Road, Dehradun.
26.Atul Kumar Bansal r/o Chowk Bazar, Jaspur, District Udham Singh Nagar
27.Bharat Singh r/o Uttaranchal House No. 60, Niranjanpuri, Kanwali, Dehradun
28.Bhuwan Chandra Pandey, 181-82 Tallital, Nainital
29.Bijendra Dutt Raturi, 3-A Convent Road, Dehradun
30.Govind Ballabh Pande r/o C-9 Naini Vihar Mallital, Nainital
31.Gurvinder Singh Court Compound, Tehri Garhwal
32.Harbir Singh Kushwaha r/o Mahant Road, Laxman Chaneli, Dehradun
33.Hari Shankar Counsul r/o P.O. Bhowali, Nainital
34.Harsh Vardhan r/o Court Compound, Nainital
35.Jagdish Prasad Joshi r/o 229, Dehradun Road, Rishikesh
36.Jagmohan Singh Rathore r/o Near I.T.I. Tanakpur Road, Khatima
37.Jaya Thakur K. r/o 18, Engineer Enclave, G.M.s. Road, Dehradun
38.Kishore Singh Bhaskar 140/3 thana Sabiq Kashiur, Udham Singh Nagar
39.Kripal Singh r/o V. Sultangarh, Junda Kashipur, Udham Singh Nagar
40.Krishi Shukla r/o Shukla Niwas, Nainital
41.Mayank Pandey, I, Raqmeshwr Lane, Near S.G.R.R. Public School, Jhanda Bazar, Dehradun
42.Munfait Ali r/o V.P.O. Paniyala Chandpur, Haridwar
43.Nadim Uuddin Ali Khan, Kashipur, Udham Singh Nagar
44.Nirmal Kumar Joshi r/o Stoneligh Compound, Tallital, Nainital
45.Prakash Chandra Maulekhi r/o Manohar Niwas Mallital, Nainital
46.Prem Singh Danu, Court compound, High Court, Nainital
47.Raghunandan Prasad Rturi r/o 113, Chukhuwala, Block 1, Dehradun
48.Rajeev Singh r/o village 44 Sunderwala, P.O. Raipur, Dehradun.
49.Rajendra Kumar Wadhwa 2/1 East Rest Camp. New Laxmi Transport, Dehradun
50.Rajendra Singh Kutiyal r/o Court Compound, Nainital

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52.Rajendra Singh Palni r/o F-4, Vikaspuram, Near Rampur Raod, I.T.I. Haldwani, Nainital
53.Rama Kant r/o V. Sahaspur, P.O. Sahaspur, Dehradun
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56.Sandeep Bhatt r/o 35, Tyagi Road, Dehradun
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58.Shree Chand Maurya r/o 20, Dharmpur, Now 11/4 Balbir road, Dehradun
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62.Surya Narayan Babulkar r/o 9, Garden House Compound Head P.O. Road, Mallital, Nainital
63.Swatantra Kumar r/o Mubarikpur Alipur Mohammapur Bujurg Hardwar
64.Syed Nadim Khurseed r/o Kapoor Lodge, Tallital, Nainital
65.Tajendra Kumar r/o Line No. 1 Azad Nagar, Haldwani, Nainital
66.Taveer Alam r/o Line No. 1 Azad Nagar Haldwani, Nainital
67.Vijay Singh Pal r/o village Deval Chaur, P.O. Manglaur Town, Haridwar
68.Vinod Kumar Agarwal r/o Mohala Lal Bara, P.O. Manglaur Town, Haridwar
69.Vinod Prasad r/o Uma Niwas, Power House, Pauri Garhwal
70.Vinod Sharma r/o Uttaracnhal Vidhi Pramasrsh Kendra, Mallittal, Nainital
71.Vipin Kumar Goyal r/o Shravan Nath Gher Moti Bazar, Haridwar
72.Yogendra Singh Village & P.O. Kanwali, Dehradun

73.Bar Council of Uttaranchal through its Secretary
74.Bar Council of U.P. Allahabad through its Secretary.

..... Respondents

Sri Paresh Tripathi, Advocate for the petitioners
Sri M.C. Pant, Advocate for respondent no.1
Sri Jitendra Chaudhari for Bar Council of U.P.
Sri Arvind Vashist, Advocate for Bar Council of Uttaranchal

Dated: August 21, 2006

**Hon'ble Rajesh Tandon, J.**

Heard Sri Paresh Tripathi counsel for the petitioners, Sri M.C. Pant counsel for the respondent no.1, Sri Jitendra Chaudhari counsel for the Bar council of U.P. Sri Arvind Vashist counsel for Bar Council of Uttaranchal.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the judgment and order dated 28.6.2005 passed by the Election Tribunal Bar Council of Uttaranchal, Dehradun in Election Petition no. 1/2004 'Krishna Kumar Bangwal vs. Dharmveer Singh and others.

Briefly stated the election for the first Bar Council of Uttaranchal was held in the last week of April 2004 and there were total 73 candidates who filed nomination papers. The total vote cast in the said election were 4734 and the counting of the same was done from 3.5.2004 to 11.5.2004. After counting of the votes, the petitioners were declared to be elected as a member Bar Council and thereafter notification was published in the gazette. The respondent no. 1 filed Election Petition before the Election Tribunal, Bar Council, Uttaranchal. The Tribunal has passed the following order on 28.6.2005:

"*याचिकाकर्ता की याचिका विपक्षी संख्या १ से ७२ के विरूद्धस्वीकार की जाती है तथा विपक्षी संख्या १८ व २० का निर्वाचनअधिकारी व मतगणनाधिकारी द्वारा दिनांक ११.६.२००४ को घोषित परिणाम निरस्त किया जाता है तथा निर्वाचन अधिकारी व मतगणनाधिकारी को आदेशित किया जाता है कि वह एक माह के भीतर चुनाव न्यायाधिकारण के समक्ष याचिकाकर्ता व विपक्षी संख्या १८ व २० की उपस्थिति में पुनःमतगणना बार कॉउसिल ऑफ उत्तर प्रदेश की चुनाव नियमावली १९९९ के नियम २६*

*से ३१ को मध्येनजर रखते हुए विधिविधान के अनुरूप पुनः मतगणना करके चुनाव परिणाम घोषित करें। समस्त याचिका व्यय याचिकाकर्ता स्वयं वहन करेगा।*

Against the aforesaid order the present writ petition has been preferred.

According to the petitioners no notice was received by them issued by the Election Tribunal to the opposite parties on 16.8.2004. A perusal of the record shows that they were required to appear before the Tribunal at Dehradun Bar Association on 28.8.2004 at 11.00 AM but on the other hand the Election Tribunal wrote a letter on 20.8.2004 to the Chairman Bar counsel, Uttaranchal at Nainital asking them to make suitable arrangement for the office of Election Tribunal. The petitioners have submitted that they reasonably believed that no proceedings are going to take place on 28.8.2004. Thereafter no notices were issued to them. In the first week of June 2005 a notice was issued from the Election Tribunal to the Chairman Bar Council informing them that the proceedings in the election petition No. 1 of 2004 shall be held in Nainital on 17.6.2005 in the Office of Bar Council but no hearing had taken place on 17.6.2005 in the Office of Bar Council although they were present there. Thereafter, no notices were issued to them and the Tribunal has decided the Election Petition ex parte vide impugned order dated 28.6.2005. The short submission of the petitioners is that the impugned order has been passed on their back without affording reasonable opportunity to them to defend their case. Further it was submitted that while allowing the recounting the law of the Apex Court has been ignored which provides that the recounting cannot be made so as to make a roving enquiry in order to fish out materials for setting aside the election alone.

Counsel for the petitioners has referred the case Vadivelu vs. Sundaram and others, 2000 (8) SCC 355, wherein it has been held by the Apex Court that recounting cannot be directed on the basis of general and bald allegations. The observations are quoted below:

*In Ram Sewak Yadav v. Hussain Kamil Kidwai5 this Court held that an order for inspection of ballot papers can be granted under the following circumstances:*

*"An order for inspection may not be granted as a matter of course: having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled:*

*(i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and*

*(ii) The Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.*

*But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But*

*a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection."*

He has also referred the case of M. Chinnasamy vs. K.C. Palaniswamy 2004 (6) SCC 341, where it has been held that recounting should not be made as of right. In the same judgment it has been held by the Apex Court to the following effect:

*"In Jibontara Chatowar v. Sarbananda Sonowal[18] wherein a case was made out that 824 ballot papers were rejected contrary to the provisions contained in Rule 63 of the Conduct of Elections Rules and in violation of the law laid down by this Court in Arun Kumar Bose v. Mohd. Furkan Ansari[19] this Court held that the High Court was in error in refusing to direct the re-counting of votes. While making the said observations, the Court relied upon an earlier decision of this Court in T.A. Ahammed Kabeer v. A.A. Azeez[20] wherein one of the members, Lahoti, J. was also a party noticing: (SCC p. 663-64, paras 27-28)*

*"27. Though the inspection of ballot papers is to be allowed sparingly and the court may refuse the prayer of the defeated candidate for inspection if, in the garb of seeking inspection, he was indulging in a roving enquiry in order to fish out materials to set aside the election, or the allegations made in support of such prayer were vague or too generalised to deserved any cognisance, nevertheless, the power to direct inspection of ballot papers is there and*

*ought to be exercised if, based on precise allegations of material facts, also substantiated, a case for permitting inspection is made out as is necessary to determine the issue arising for decision in the case and in the interest of justice.*

* * *

*28. It is true that a re-count is not to be ordered merely, for the asking or merely because the court is inclined to hold a re-count. In order to protect the secrecy of ballots the court would permit a re-count only upon a clear case in that regard having been made out. To permit or not to permit a re-count is a question involving jurisdiction of the court. Once a re-count has been allowed the court cannot shut its eyes on the result of re-count on the ground that the result of re-count as found is at variance with the pleadings. Once the court has permitted re-count within the well-settled parameters of exercising jurisdiction in this regard, it is the result of the re-count which has to be given effect to."*

In view of the aforesaid the order passed by the Tribunal for recounting without any opportunity of controverting the averments of the election petition, is wholly unwarranted. Further, the election has been declared void and at the same time recounting has been directed, the setting aside of election, therefore, is without jurisdiction.

Natural justice requires that reasonable opportunity must be afforded to the respondents before passing any order which effects the right of the parties. No opportunity was given to the petitioners for being heard before passing the order against them. The order, therefore, was passed by the respondent no.1 in utter violation of the principles of natural justice.

The Apex Court in the case D.K. Yadav vs. J.M.A. Industries Ltd; (1993) 3 SCC 259 has held as under:

*"It is a fundamental rule of law that no decision just be taken which will affect the right of any person without fist being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405 the Constitution Bench held that civil consequences covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehension connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edn. Page 1487 defined civil rights are such as belong to every citizen of the state of country….. they include….. rights capable of being enforced or redressed in a civil action…. In State of Orissa vs. (Miss) Binapani Dei (1967) 2 SCR 625 this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence is support thereof supplied and must be given a fair opportunity to meet the case before*

*an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principle of natural justice.*

*In State of W.B. vs. Anwar Ali Sarkar 1952 SCR 284: AIR 1952 SC 75 per majority, a seven judges Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi vs. Union of India (1978) 1 SCC 248 another Bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority, which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent*

*fundamental rights of citizens, must taken care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way, which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.*"

In the case Smt. Maneka Gandhi vs. Union of India and another, AIR 1978 SC 597, the Apex Court has observed as under:

"*It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.*

"*In England, the rule was thus expressed by Byles J. in Cooper vs. wandsworth Board of Works: (1863)14 CB (NS) 180:*

"*The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. Adam*

*(says God), "where art thou? Hast thou not eaten of the tree whereof I commanded the that thou shouldest not eat." And the same question was put to Eve also."*

The judgment in the case of Menaka Gandhi (supra) has been followed in the case of West Bengal Electricity Regulatory Commission vs. C.E.S.C. Ltd. JT 2002 (7) SC 578, relying upon the case of Mrs. Maneka Gandhi vs. Union of India & Another, 1978 (1) SCC 248 as under:

*"The right of audi alteram partem is a valuable right recognized even under the India Constitution. See Mrs. Menaka Gandhi vs. Union of India and another, 1978 (l) SCC 248 wherein it is held, the principle of the maxim which mandates that no one should be condemned unheard; is a part of rule of natural justice. We have already held that such right of hearing conferred by a statute cannot be taken away even by courts."*

Relying upon the cases of R.V. Camborne Justices (1954) 2 All England Law Reports 850, it has been held in International Airports Authority of India vs. K.D. Bali (1988) 2 SCC 360 as under:

*"While indorsing and fully maintaining the integrity of the principle 'Justice should not only be done, but should manifestly be seen to be done,' it is important to remember*

*that the principle should not be done than it should I fact be done."*

Law Lexicon defines "Justice" as under:

***"justitia est constans et perpetua voluntas just sum cuique tribuendi:*** *Justice is the constant and perpetual disposition or will of giving to every man his right."*

The Apex Court in Dinesh Dutt Joshi vs. State of Rajasthan and others, (2001) 8 SCC 570 has held as under:

*It is a well-established principle of law that every court has inherent power to act ex debito justitiae – to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the court. The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable.*

Further in the case Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others, AIR 1978 SCC 851, Apex Court has held as under;

*"Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has, many colours and shades, many forma and shapes and, save where valid law excludes, it, applies when people are affected by acts of authority. It is the hone of healthy government, recognized from earliest times and not a mystic*

*testament of Judge-made law. Indeed, from the legendary days of Adam – and of Kautilya's Arthasastra – the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other extant principle, not the hoary chord of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.*

*The dichotomy between administrative and quasi-judicial functions vis-à-vis the doctrine of natural justice is presumably obsolescent after Kraipak in India and Schmidt in England.*

*Kraipak marks the watershed, if we may say so, in the application of natural justice to administrative proceedings. Hegde, J., speaking for a Bench of five Judges observed, quoting for support Lord Parker in In re H.K. (an infant)*[16]*:*

> *"It is not necessary to examine these decision as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding. (p. 467) (SCC p. 271, para 17)*
>
> * * *
>
> *The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they don not supplant the law of the land but supplement it. (p. 468) (SCC p. 272. para 20)*

* * *"

*The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should he made inapplicable to administrative inquiries. Often times it is not easy to draw the line that demarcates administrative enquiries form quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. AS observed by this Court in Suresh Koshy George v. University of Kerala the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case." (p. 469) (SCC pp. 272-3, para 20)*

*It is an interesting sidelight that in America it has been held to be but fundamental fairness that the right to an administrative hearing is given. Natural justice is being given access to the United Nations. It is notable that*

*Mathew, J. observed in Indira Gandhi (p. 513, see p. 128, para 303):*

> *"If the amending body really exercised judicial power, that power was exercised in violation of the principles of natural justice of audi alteram partem. Even if a power is given to a body without specifying that the rules of natural justice should be observed in exercising it, the nature of the power would call for its observance."*

*Lord Morris of Borth-y-Gest in his address before the Bentham club concluded:*

> *"We can, I think, take pride in what has been done in recent periods and particularly in the filed of administrative law by invoking and by applying those principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a 'majestic' conception? I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance? I believe that it is very much more. If it can be summarized as being fairplay in action – who could wish that it would ever be out of action? It denotes that the law is not only to be guided by reason and by logic but that its purpose will not be fulfilled if it lacks more exalted inspiration."*

*It is fair to hold that subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play.*

In the present case it is clear that no opportunity was given to the petitioners to defend their cases before passing any order, against them. The Tribunal has not acted in a manner, which is patently impartial, and thus the impugned order deserves to be quashed.

In view of above, a writ of certiorari is issued quashing the order dated 28.6.2005 passed by the Election Tribunal, Bar Counsel of Uttaranchal. The case is remanded to the Election Tribunal for deciding afresh after giving opportunity to the petitioners to complete their pleadings and thereafter opportunity of hearing shall be provided to the petitioners.

Accordingly, writ petitions are allowed. No order as to costs.

Dated: August 21, 2006 **Rajesh Tandon, J.**

*****Dhyani